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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

IVEY EASTWOOD,

Plaintiff,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, aka AMERICAN
FAMILY INSURANCE GROUP,

Defendant.

Civil No.: CV-05-1579-HA

DECLARATION OF BOB NESS

I, Bob Ness, do hereby state as follows.

1. I make this Declaration based on personal knowledge and am competent to testify to the matters herein.
2. I am in Corporate Risk Management at American Family Mutual Insurance Company. I have been with American Family since approximately 1981. My office is in Madison, Wisconsin.
3. Prior to January 23, 2004, American Family had insurance coverage through other insurance companies for potential liability due to errors or omissions of American

Family claim adjusters in the handling of liability claims against our insureds. At that time, part of my job responsibilities as a Risk Manager required that I be told of any potential extra-contractual exposure to our company due to alleged claim handling deficiencies so that I could in turn keep our E&O insurance companies advised.

4. After January 23, 2004, American Family allowed its E&O coverage for claims handling to expire and American Family has been self-insured for that risk ever since. After we became self-insured for that risk, my need for information related to the facts of any specific claim ceased. However, the various regions of American Family continued to report such potential alleged extra-contractual claims to me and I continued to keep track of them solely for administrative purposes. It has never been my job responsibility at American Family to evaluate the adequacy or potential liability from any alleged extra-contractual claim.

5. In the case of *Vivero v. Eastwood*, Multnomah County Case No. CV 0405-04932, it appears that I was given notice on or about December 27, 2004 from Brian Hunt, one of our in-house legal counsel, that an extra-contractual bad faith claim was being alleged by some party against American Family. Because American Family was self-insured for such risks at that time, and because I was only maintaining information about such alleged claims for administrative purposes, I made no effort to analyze or evaluate the validity of the alleged bad faith claims that Mr. Hunt was referring to. I had no involvement whatsoever in any decision making related to the defense or negotiations in the underlying case.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT, AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED this 14 day of DECEMBER, 2006.



Bob Ness

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